

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. CRIMINAL NO. 05-4 ERIE

EUGENE LAMONT GAVIN

CHANGE OF PLEA

Proceedings held before the HONORABLE
SEAN J. McLAUGHLIN, U.S. District Judge,
in Courtroom C, U.S. Courthouse, Erie,
Pennsylvania, on Thursday, August 18, 2005.

APPEARANCES:

MARSHALL J. PICCININI, Assistant United States
Attorney, appearing on behalf of the Government.

DANIEL J. BRABENDER, JR., Esquire, appearing on

Ronald J. Bench, RMR - Official Court Reporter

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1 P R O C E E D I N G S

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3 (Whereupon, the Change of Plea proceedings began at
4 9:40 a.m., on Thursday, August 18, 2005, in Courtroom C.)

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6 THE COURT: Mr. Gavin, I'm informed that you wish to
7 change the plea that you previously entered to Count One of
8 Criminal No. 05-4 Erie to a plea of guilty, is that correct?

9 THE DEFENDANT: Yes.

10 THE COURT: You're going to have to keep your voice
11 up, sir, speak into the microphone.

12 THE DEFENDANT: Yes.

13 THE COURT: Before accepting your guilty plea, there

14 are a number of questions that I will ask you to make certain

15 that it is a valid plea. If you don't understand any question,

16 please tell me, and I will explain it to you. If at any time

17 you wish to talk to Mr. Brabender, let me know, I will give you

18 an opportunity to consult. I give you these instructions

19 because it is essential to valid plea that you understand every

20 question before you answer it. Would you please raise your

21 right hand.

22 (Whereupon, the Defendant, EUGENE LAMONT GAVIN,

23 was sworn.)

24 THE COURT: Do you understand now that you have been

25 sworn, your answers to my questions are subject to the

1 penalties of perjury or of making a false statement if you do

2 not answer truthfully?

3 THE DEFENDANT: Yes.

4 THE COURT: Would you please state your full name?

5 THE DEFENDANT: Eugene Lamont Gavin.

6 THE COURT: How old are you?

7 THE DEFENDANT: Twenty-nine.

8 THE COURT: How far did you go in school?

9 THE DEFENDANT: I got a diploma from high school.

10 THE COURT: Sir, I can't hear you, you've got to

11 talk into the microphone?

12 THE DEFENDANT: I have a high school diploma and I

13 have about six credits from getting a degree in computer

14 programing.

15 THE COURT: All right. And you can communicate in

16 English, is that right?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Brabender, have you been able to

19 communicate with him in English?

20 MR. BRABENDER: Yes, your Honor.

21 THE COURT: Have you taken any drugs or medication

22 or have you drunk any alcoholic beverages in the last 24 hours?

23 THE DEFENDANT: No.

24 THE COURT: Are you now or have you recently been

25 under the care of a physician or a psychiatrist?

1 THE DEFENDANT: No.

2 THE COURT: Are you now or have you recently been

3 hospitalized or treated for narcotic addiction?

4 THE DEFENDANT: No.

5 THE COURT: Do you understand what's happening

6 today?

7 THE DEFENDANT: Yes.

8 THE COURT: Does either counsel have any doubt about

9 the competence of this defendant to plead guilty at this time

10 to charge contained in the Indictment; Mr. Piccinini?

11 MR. PICCININI: No, your Honor.

12 THE COURT: Mr. Brabender?

13 MR. BRABENDER: No, your Honor.

14 THE COURT: I find the defendant is competent to

15 plead.

16 Do you have an attorney with you here today?

17 THE DEFENDANT: Yes.

18 THE COURT: What's his name?

19 THE DEFENDANT: Daniel Brabender.

20 THE COURT: Have you had a sufficient opportunity to

21 discuss your case with him?

22 THE DEFENDANT: I guess, not really but -- I just

23 spoke to him.

24 THE COURT: Would you like to chat a little bit with
25 him?

1 THE DEFENDANT: Yeah, if possible.

2 THE COURT: All right, we're going to take a short
3 break.

4 (Recess from 9:43 a.m.; until 9:54 a.m.)

5 THE COURT: All right, Mr. Gavin, as I was saying,
6 have you had a sufficient opportunity to discuss your case with
7 Mr. Brabender?

8 THE DEFENDANT: Yes.

9 THE COURT: You just had some additional time to
10 chat with him while I took a break, you feel that was
11 sufficient, is that right?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Are you satisfied with the
14 work that he's done for you in this case?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that if you continue
17 to plead not guilty and do not change your plea, you would have

18 the right to be assisted by an attorney at the trial of this

19 charge against?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you understand that if you did

22 not enter a guilty plea and if you qualified financially, you

23 would be entitled to be assisted by an attorney at no cost to

24 you at every phase of the processing of the charge against you?

25 THE DEFENDANT: Yes.

1 THE COURT: And do you understand that if you did

2 not plead guilty, under the Constitution and the laws of the

3 United States, you would be entitled to a speedy trial by a

4 judge and jury on the charge contained in the Indictment?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that if there were a

7 trial, you would be presumed to be innocent at the trial of the

8 charge against you?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that if there were a

11 trial, the government would be required to prove your guilt by

12 competent evidence and beyond a reasonable doubt before you

13 could be found to be guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if there were a

16 trial, you would not have to prove that you were innocent?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if there were a

19 trial, the jury would have to be unanimous in order to find you

20 guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that if there were a

23 trial, you would have the right to participate in the selection

24 of the jury; that you would have the right to strike or

25 eliminate any prospective juror if it was demonstrated that the

1 juror would be unable to render a fair and impartial verdict;

2 and that you would have the right to strike or eliminate ten

3 jurors from the jury, and one alternate juror, without giving

4 any reason at all for so doing?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that if there were a
7 trial, the witnesses for the government would have to come to
8 court and they would have to testify in your presence?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that if there were a
11 trial, your counsel could cross-examine the witnesses for the
12 government, object to evidence offered by the government and
13 then offer evidence on your behalf?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if there were a
16 trial, the government would have to pay witness fees to
17 witnesses which you wished to call on your behalf, if you
18 qualified as being financially unable to pay those fees?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that if there were a
21 trial, you would have the right to testify if you chose to?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if there were a
24 trial, you would have the right not to testify and that no
25 inference or suggestion of guilt could be drawn from the fact

1 that you did not testify?

2 THE DEFENDANT: Yes.

3 THE COURT: If you plead guilty and I accept your
4 plea, do you understand that you will waive your rights I just
5 mentioned to you, that there will be no trial, and I will enter
6 a judgment of guilt and sentence you on the basis of your
7 guilty plea after considering a presentence report?

8 THE DEFENDANT: Yes.

9 THE COURT: If you plead guilty, do you understand
10 that you will also have to waive your right not to incriminate
11 yourself, because I'm going to ask you questions about what you
12 did in order to satisfy myself that you are guilty as charged
13 and you'll have to acknowledge your guilt?

14 THE DEFENDANT: Yes.

15 THE COURT: Now that I mentioned your rights to you,
16 do you still wish to plead guilty?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you received a copy of the
19 Indictment naming you, and have you discussed with your counsel
20 the charge in the Indictment to which you are pleading guilty

21 today?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that you are charged

24 in Count One of the Indictment -- there is no superseding

25 Indictment, is there?

1 MR. PICCININI: There is not, your Honor.

2 THE COURT: Do you understand that you are charged

3 in Count One of the Indictment as follows: "From in and around

4 April, 2004 to in and around August, 2004, in the County of

5 Erie, in the Western District of Pennsylvania and elsewhere,

6 the defendants, Michelle Nicole Welsh and Eugene Lamont Gavin,

7 did knowingly, intentionally and unlawfully conspire with each

8 other and with others, both known and unknown to the grand

9 jury, to possess with the intent to distribute and distribute

10 five grams or more of a mixture and substance containing a

11 detectable amount of cocaine base, commonly known as crack, a

12 Schedule II controlled substance, contrary to the provisions of

13 Title 21, United States Code, Sections 841(a)(1) and

14 841(b)(1)(B)(iii).

15 In violation of Title 21, United States Code,

16 Section 846."

17 Do you understand the charge?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that in order for the

20 crime of conspiracy to possess with intent to distribute and

21 distribute five grams or more of cocaine base, in violation of

22 Title 21, United States Code, Section 846 to be established,

23 the government must prove all of the following essential

24 elements beyond a reasonable doubt:

25 That two or more persons came to a mutual

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1 understanding or agreement to try to accomplish a common and

2 unlawful plan to distribute and/or possess with intent to

3 distribute the controlled substance charged in the Indictment.

4 That the defendants knowingly and willfully became a

5 member of such conspiracy.

6 That cocaine base is a Schedule II controlled

7 substance pursuant to Title 21, United States Code, Section

8 812(c), Schedule II(a)(4).

9 And that the conspiracy had the specific unlawful

10 purpose of distributing and/or possessing with intent to

11 distribute five grams or more of cocaine base.

12 Do you understand the elements of this crime?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that the maximum

15 penalty for a violation of Count One is a term of imprisonment

16 of not less than five years to a maximum of 40.

17 A fine not to exceed \$2 million.

18 A term of supervised release of at least four years.

19 For a second or subsequent felony drug conviction

20 that is final, whether federal, state or foreign; a term of

21 imprisonment of not less than 10 years to a maximum of life.

22 A fine not to exceed \$4 million.

23 A term of supervised release of at least eight

24 years.

25 As well as a mandatory special assessment of \$100.

1 Do you understand the maximum penalty for a

2 violation of Count One?

3 THE DEFENDANT: Yes.

4 THE COURT: Has anybody made any threat to you or to
5 anyone else that has forced you in any way to plead guilty
6 today?

7 THE DEFENDANT: No.

8 THE COURT: All right. My understanding is that
9 there is no plea agreement in this case?

10 MR. PICCININI: That is correct, your Honor.

11 THE COURT: Now, do you understand that the offense
12 to which you are pleading guilty today is a felony offense;
13 that if your plea is accepted you will be adjudged guilty of
14 that offense and that such adjudication may deprive you of
15 valuable civil rights; such as the right to vote, hold public
16 office, the right to serve on a jury and the right to possess
17 any kind of firearm; do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Under the Sentencing Reform Act of 1984,
20 the United States Sentencing Commission has issued guidelines
21 for judges to follow in determining sentences in criminal cases
22 for offenses occurring after November 1, 1987. Have you and
23 Mr. Brabender talked about how the Sentencing Guidelines might
24 apply to your case and the fact that the suggested guideline

25 ranges are now advisory by virtue of two Supreme Court

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1 decisions?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that I will not be

4 able to determine the advisory guideline sentence of your case

5 until after the presentence report has been completed and you

6 and the government have had an opportunity to challenge the

7 facts reported by the probation officer?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that after it has been

10 determined what guideline sentence applies to a case, the judge

11 does have the authority, in some circumstances, to impose a

12 sentence that is more severe or less severe than that called

13 for by the guidelines?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that under certain

16 circumstances you or the government may have the right to

17 appeal any sentence which I impose?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand that parole has

20 been abolished and that if you are sentenced to a term of

21 imprisonment, you will not be released on parole?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if the sentence

24 is more severe than you expected it to be, you will still be

25 bound by your guilty plea and that you will have no right to

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1 withdraw it?

2 THE DEFENDANT: Yes.

3 THE COURT: Except for your discussions with Mr.

4 Brabender about the Sentencing Guidelines, has anybody made any

5 prediction or promise to you about what your sentence will be?

6 THE DEFENDANT: No.

7 THE COURT: Has anything that I have said here today

8 suggested to you what your actual sentence will be?

9 THE DEFENDANT: No.

10 THE COURT: Have you been instructed by your

11 counsel, by government counsel, or by anybody else to respond

12 untruthfully to any question about a promised sentence?

13 THE DEFENDANT: No.

14 THE COURT: Mr. Gavin, did you, as previously read
15 to you by me, commit the offense as charged?

16 THE DEFENDANT: Yes.

17 THE COURT: What would be the government's proof,
18 Mr. Piccinini?

19 MR. PICCININI: Your Honor, if this matter proceeded
20 to trial, the government would provide testimony from members
21 of the Erie Area Gang Law Enforcement Task Force, who would set
22 forth, based upon their investigation, a conspiracy between Mr.
23 Gavin, co-conspirator Welsh, as well as unindicted
24 co-conspirator Anthony Gamble.

25 The testimony of the unindicted co-conspirators,

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1 co-defendants, and others would establish that Anthony Gamble
2 had been incarcerated in both the Erie County Prison and the
3 Albion State Correctional facility. During the timeframe of
4 his incarceration, he made arrangements with his girlfriend,
5 Michelle Welsh, to coordinate with Mr. Gavin so that Mr. Gavin
6 would continue to supply Ms. Welsh, so that she could sell

7 crack cocaine to Mr. Anthony Gamble's former clients.

8 The testimony and the evidence at trial would

9 include multiple telephone conversations between Mr. Gamble and

10 Ms. Welsh throughout the months of April, May, June and August

11 of 2004, setting forth their discussions concerning the

12 conspiracy and their desire to obtain crack cocaine from Mr.

13 Gavin. In addition to conversations also recorded from the

14 prison phone facility that were engaged in between Mr. Gavin,

15 Ms. Welsh and Mr. Gamble confirming the nature of that

16 conspiracy.

17 In addition to that evidence, on January 20, 2005,

18 the defendant was interviewed by members of the EAGLE Task

19 Force and admitted that after Anthony Gamble was arrested, he

20 had made arrangements for Gavin to supply Ms. Welsh, so that

21 she could sell crack cocaine to customers for crack cocaine.

22 He admitted that during his conspiracy with Ms.

23 Welsh he sold crack cocaine to her for purposes of her

24 supplying those other individuals. That would be the nature of

25 the government's proof.

1 THE COURT: All right. Mr. Gavin, you just heard
2 what Mr. Piccinini has said by way of summary as to what the
3 government's proof would be, do you agree with everything he
4 said?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you still wish to plead guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: Is it your advice that he do so, Mr.
9 Brabender?

10 MR. BRABENDER: Yes, your Honor.

11 THE COURT: Because you acknowledge that you are in
12 fact guilty as charged in Count One of Indictment No. 05-4
13 Erie, because you know about your right to a trial, because you
14 know what the maximum possible penalties are and because you
15 are voluntarily pleading guilty, I will accept your guilty plea
16 and enter a judgment of guilty on your plea to Count One of
17 Indictment No. 05-4 Erie.

18 It is therefore the finding of the court in the case
19 of United States of America versus Eugene Lamont Gavin that
20 this defendant is fully competent and capable of entering an
21 informed plea, and that his plea of guilty is a knowing and

22 voluntary plea supported by an independent basis in fact

23 containing each of the essential elements thereof and,

24 therefore, the plea is accepted and the defendant is now

25 adjudged guilty of the charge.

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1 Mr. Brabender, would you please have your client and

2 yourself execute the change of plea.

3 (Whereupon, the Change of Plea was executed by the

4 Defendant and Defense Counsel.)

5 THE COURT: Mr. Gavin, a presentence report will be

6 prepared by the United States Probation Office. It is in your

7 best interests to cooperate with the probation officer in

8 furnishing information for the report because that report will

9 be important in my decision about what your sentence will be.

10 Disposition of sentencing in this case is set for

11 November 18, 2005, at 10 a.m., in this courtroom. All right,

12 we're adjourned.

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14 (Whereupon, at 10:06 a.m., the Change of Plea

15 proceedings were concluded.)

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1 C E R T I F I C A T E

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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12 Ronald J. Bench

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